

**Memorandum to the File
Case Closure**

Alleged Prohibited Personnel Practices and Preferential Treatment
Office of Information & Technology, VA Central Office Washington, DC
(2011-00147-IQ-0019)

The VA Office of Inspector General Administrative Investigations Division investigated an allegation that [REDACTED] Information and Technology (OI&T), VA Central Office (VACO), Washington, DC, engaged in a prohibited personnel practice when he hired [REDACTED] OI&T Enterprise Risk Management. [REDACTED] allegedly selected the interview panel to ensure [REDACTED] s selection; there were more qualified candidates; and she was the only OI&T Senior Executive Service (SES) employee permitted to work virtually from the field. To assess this allegation, we interviewed [REDACTED] s supervisor, [REDACTED] OI&T Quality Performance and Oversight, and [REDACTED] Operations Division, Corporate Senior Executive Management Office. We also reviewed personnel records and other relevant documents, as well as Federal regulations and VA policy.

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Federal law states that any employee who has authority to take, direct others to take, recommend, or approve any personnel action, shall not, with respect to such authority grant any preference or advantage not authorized by law. 5 USC § 2302 (b)(6). The law also prohibits any employee from taking or failing to take any personnel action if the taking of, or failure to take the action violates any law, rule, or regulation implementing, or directly concerning the merit system principles. 5 USC § 2302 (b)(12). Federal law also requires that unless otherwise exempted by law, recruitment of personnel into Federal employment be accomplished through fair and open competition in order to ensure that all receive equal opportunity. 5 USC § 2301.

Personnel records reflected that [REDACTED] requested that the VA Secretary approve establishing an SES position and filling it with the SES Career Reinstatement of [REDACTED] and records showed that this was approved on June [REDACTED] 2010. Further, records reflected that [REDACTED] nominated [REDACTED] for a non-competitive, SES Career Reinstatement as [REDACTED] that he did not recommend any other candidate; and that [REDACTED] was reinstated on August [REDACTED] 2010. [REDACTED] told us that this was a non-competitive appointment and that the position was not announced for a competitive process.

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Federal law states that a former SES career appointee is eligible for general reinstatement if they completed an SES probationary period under a previous SES career appointment or were exempted from that requirement and their separation from their last SES career appointment was not a removal for various cited reasons.

Personnel records reflected that [REDACTED] was an SES at the [REDACTED] from [REDACTED] 2006 to [REDACTED] 2008; that she resigned that

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position effective [REDACTED] 2008; but records did not show the reason for her resignation. However, records reflected that [REDACTED] received an "excellent" performance rating, achieving 94.75 points out of 100, for the 2007 rating period.

VA policy states that the VA's SES staffing program objective is to support VA's mission through the recruitment and placement of well-qualified individuals into SES positions. It also states that management retains the right to determine whether an SES position will be filled through the career appointment of an individual identified through merit competition or through non-competitive action, such as non-career appointment, reassignment, transfer, reinstatement, or appointment of a certified graduate of an SES Executive Development Program. Further, policy states that the VA Secretary or his designee shall determine the allocation of SES positions among all VA organizational elements and that unless specifically modified in subsequent issuances, the Secretary retains prior approval authority for all actions involving SES positions and their incumbents. VA Directive 5027. VA policy also permits for a former career SES to be reinstated to an SES position for which qualified without regard to merit staffing requirements. VHA Handbook 5027, Part III, Paragraph 11a.

[REDACTED] told us that the [REDACTED] for OI&T, and [REDACTED] interviewed [REDACTED] for the SES position. She said that to her knowledge there was no requirement for [REDACTED]'s position to be physically located at VA Central Office (VACO) in Washington, DC. She further said that she was only aware of a memorandum requiring Deputy Assistant Secretaries be located at VACO. A May 1, 2009, Deputy Assistant Secretary for Human Resources Management memorandum reflected that the VA Secretary determined that Washington, DC, was the official duty station for every DAS within the Department. [REDACTED] also provided records reflecting that five non-DAS SES employees worked virtually and outside of the Washington, DC, commuting area, to include [REDACTED]

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During our investigation, we discovered what appeared to be excessive official travel on the part of [REDACTED]. Personnel records reflected that her duty station was [REDACTED] and her travel records showed that she spent over 45 percent of her time attending meeting at VACO in Washington, DC. [REDACTED] told us that [REDACTED]'s frequent travel to VACO was due to the [REDACTED] position being a new position, requiring the start up of a new office. She said that [REDACTED] was intimately involved in developing new position descriptions; hiring employees for her new office; and was tasked with also managing the Acquisition Strategy Office until OI&T hired a new SES for that position. [REDACTED] told us that the Acquisition Strategy position was recently filled; position descriptions were completed for the Enterprise Risk Management Office; and that she anticipated that [REDACTED]'s travel to VACO would decrease.

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Conclusion:

We did not substantiate that [REDACTED] engaged in a prohibited personnel practice or gave preference in hiring to [REDACTED]. Personnel records reflected that she was

reinstated as an SES in accordance with law and VA policy. In addition, the VA Secretary approved the creation of the position, and the [REDACTED] the OI&T [REDACTED] and [REDACTED] interviewed [REDACTED] for the position. We also did not substantiate that [REDACTED] was the only OI&T SES employee permitted to work virtually outside the Washington, DC, area, and we found no VA or OI&T policy that prohibited an SES from working virtually. We are therefore closing this investigation without issuing a formal report or memorandum.

Prepared By:

[REDACTED]

2/8/2011
Date

Approved By:

[REDACTED]

2/8/2011
Date